IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.2260 OF 2007
IN
FIRST APPEAL NO.1175 OF 2005

Mahadev Anant Rane ...Applicant

vs.

Vilas Anant Rane & Anr. ...Respondents

Mr.N.P.Shimpi for the Applicant
Mr.S.S.Redekar for Respondent No.1
Mr.Kambli i/b Mr.A.M.Saraogi for Respondent No.3.

CORAM: A.S.OKA,J.
DATE : OCTOBER 23, 2007.

P.C.:

1. Heard Advocates for the parties. The prayer in this application is for discharging the Court Receiver, High Court, Bombay.

2. The Applicant in this application is the Respondent in the First Appeal. The Applicant is the first defendant in the suit filed by the first Respondent herein. The suit was for perpetual injunction restraining the Defendants in the suit from disturbing the joint possession of the plaintiff. The suit was dismissed by the judgment and Decree dated 31st March 2005. During the pendency of the suit, the Court Receiver, High Court, Mumbai was appointed as Receiver of the suit premises. By orders passed in Appeal from Order no.246 of 2003, the Court Receiver was directed to appoint the Applicant herein as his agent subject to payment of royalty @ Rs.2000/- per month.

3. In the First Appeal, a Civil Application bearing No.2815 of 2005 was filed by the first Respondent herein (appellant) praying for a direction to the Court Receiver to take charge of the premises forthwith and to appoint the first Respondent (Appellant) as the agent of the Court Receiver. On the said application on 27th June 2005, this court passed anad-interim order directing that the Court Receiver appointed during the pendency of the suit will continue until further order. The said Civil Application was disposed of by order dated 12th April 2007. By the said order the Civil Application was rejected.

4. It must be noted here that while dismissing the suit, the learned trial Judge directed that the status of the first defendant as an agent of the Court Receiver was continue for a period of three months and on expiry of the period of three months, the order of appointment of the Court Receiver shall be treated to have been vacated. The only application made by the first Respondent (appellant) for interim relief is in Civil Application No.2815 of 2005. on the said application, ad-interim order was passed on 27th June 2005 by which the appointment of the Court Receiver was continued. Now, the said application has been rejected by order dated 12th April 2007. Thus, on 12th April 2007, ad-interim order passed in the Civil Application came to an end. As a result, considering operative part of the the impugned Judgment and

Decree, the Court Receiver stood discharged.

5. Even otherwise also, after dismissal of the suit on merits, the first Respondent is not entitled to interim relief of appointment of the Court Receiver. The trial court has recorded a finding that the first Respondent has failed to prove that he was jointly carrying on business with the Applicant. Therefore, even on merits also the first Respondent (Appellant) is not entitled to interim relief of appointment of the court Receiver.

6. The Applicant has filed an undertaking dated 19th October 2007 (page 20 of the First Appeal compilation). In the said undertaking, he has stated that he will not create any third party interests in respect of the suit premises during the pendency of the Appeal. He has stated that he will not part with possession of the suit premises without prior permission of this court. The said undertaking deserves to be accepted. In view of acceptance of the said undertaking, the first Respondent (appellant) will be sufficiently protected during the pendency of the Appeal.

7. The Court Receiver has submitted a report no.170/2007. It is pointed in the report that the first defendant-Applicant has not paid arrears of the royalty from December 2006. Now, the Applicant has paid the arrears of royalty. As the Receiver is proposed to be discharged, no further directions

are required to be passed in terms of prayer clauses (a) to (c) of the Receiver's Report. Hence, I pass the following order :

i) It is clarified that the appointment of the Court Receiver made during the pendency of the suit continued by ad-interim order dated 27th June 2005 stands vacated. The Court Receiver is discharged without passing accounts.

ii) The entire arrears of royalty has been paid by the Applicant. The Court Receiver was appointed at the instance of the first Respondent. Therefore, the Receiver's charges will have to be paid by the first Respondent.

iii) Prayer (f) of the Receiver's Report is granted.

iv) Undertaking dated 19th October 2007 filed by the Applicant in the First Appeal is accepted.

v) Civil Application and the Receiver's Report are disposed of in above terms. No order as to costs.

vi) Parties to act upon an authenticated copy of this order.

. Prayer for stay of operation of this order is rejected.

JUDGE